CONTENTS.

CASES CITED.

STATUTES CITED.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

ROBERT L. COLEMAN, AS ADMINISTRATOR, and Louise L. Coleman, as Administratrix, of the Estate of Walter H. Coleman, Deceased, Appellants, *v.* THE UNITED STATES. } No. 343.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

On March 9, 1916, appellants, as administrators of the estate of Walter H. Coleman, filed in the Court of Claims their petition seeking to recover from the United States the sum of $6,721.71, paid on May 29, 1903, as a tax on the interest of the next of kin of the deceased in his personal estate (R. 1–8).

The general traverse was entered thereto (R. 9).

The findings of fact (R. 10–12) showed that Walter H. Coleman died in Brooklyn, New York, on June 1, 1902, intestate, leaving three children as his heirs

and next of kin, each entitled to receive one-third of said personal estate after payment of debts and charges. Appellants qualified as his administrators on June 9, 1902. On June 12, 1902, they advanced $500 to each of said next of kin, and on June 25, 1902, the further sum of $500 to one of them.

On July 1, 1902, the debts of decedent and the expenses of administration were unascertained and unpaid.

On May 29, 1903, the United States Internal Revenue Collector for the First District of New York collected from appellants as the tax due on the interest of said next of kin in said estate said sum of $6,721.71. It was demanded under section 29 of the Act of Congress approved June 13, 1898, ch. 448, 30 Stat. 448, entitled "An Act to provide ways and means to meet war expenditures and for other purposes," and amendments thereto. The tax was paid voluntarily without protest, and was by the collector covered into the treasury of the United States in the ordinary course of business.

On March 17, 1914, the appellant, Louise L. Coleman filed a claim for said sum of said tax as erroneously and illegally paid and collected under the provisions of said War Revenue Act and amendments and as due to be refunded under section 3 of the Act of June 27, 1902, c. 1160, 32 Stat. 406, and the Act of July 27, 1912, c. 256, 37 Stat. 240.

The claim was rejected on the ground that not having been presented by January 1, 1914, it was

barred of consideration by the said Act of July 27, 1912.

The Court of Claims found as a conclusion of law that no claim for the refund of said tax was filed with the Commissioner of Internal Revenue within the time required by law and that the petition must therefore be, and it is, dismissed (R. 12).

From the decree so adjudging, this appeal is prosecuted.

ARGUMENT.

I.

The claim is barred by the Act of July 27, 1912, because not presented to the Commissioner of Internal Revenue on or before January 1, 1914.

Recovery in the present suit is sought under section 3 of the Act of Congress of June 27, 1902, ch. 1160, 32 Stat. 406, called the Refunding Act, which provides, in substance, (*a*) for the refund upon proper application of all taxes theretofore or thereafter collected under the Act of June 13, 1898, upon contingent beneficial interests which should not become vested prior to July 1, 1902, and (*b*) that no tax should thereafter be collected under said act upon any contingent beneficial interest which should not become absolutely vested in possession and enjoyment prior to that date (R. 7, 8).

Claims for refunds under this provision have been held to be in the nature of claims for a bounty specially set aside by the Government. The provision contains no limitation on the time in which claims thereunder may be presented; and in view of

the special nature of such claims, it is held that they are not subject to the two-year limitation imposed by section 3228 of the Revised Statutes upon claims for the refund of taxes generally. *Fidelity Trust Co.* v. *United States*, 45 Ct. Cls. 362; *Thatcher* v. *United States*, 149 Fed. 902; *United States* v. *Shipley*, 197 Fed. 265; *The Daley Case*, 26 Ops. Atty. Gen. 194.

Accordingly, for a period of ten years claims arising under this provision were not affected by any limitation save the general six-year limitation on the jurisdiction of the Court of Claims and the Circuit and District Courts imposed by section 1069 of the Revised Statutes and section 1 of the Tucker Act (see Judicial Code, sections 24 (par. 20) and 156), while during the same period other claims also growing out of section 29 of the War Revenue Act were subject to the two-year limitation contained in section 3228 of the Revised Statutes.

In order to place all claims growing out of the War Revenue Act on an equal footing, Congress passed the Act of July 27, 1912 (ch. 356, 37 Stat. 240), extending the time for the filing of such claims for refunds growing out of section 29 of the War Revenue Act as had become barred by the several statutes of limitation, and providing that *all* claims for the refund of taxes alleged to have been erroneously or illegally collected under said War Revenue Act might be presented to the Commissioner of Internal Revenue on or before January 1, 1914, *and not thereafter*.

The language of the act is plain and unmistakable and leaves no room for doubt that it was the purpose of Congress to place a definite limitation on all claims growing out of the Act of 1898:

> * * * *all claims for the refunding* of any internal tax alleged to have been erroneously or illegally assessed or collected under [section 29 of the War Revenue Act], or *of any sums alleged to have been* excessive, or *in any manner wrongfully collected under the provisions of said act may be presented to the Commissioner of Internal Revenue on or before* [*January 1, 1914*], *and not thereafter.* [Italics ours.]

This sum of $6,721.71 if wrongfully collected was erroneously collected as taxes on May 29, 1903, in violation of the provisions of the act of June 27, 1902, and such is the allegation ot the claim filed with the Commissioner of Interral Revenue. (R. 11–12.)

In this case it is conceded that the payment was made voluntarily in 1903. No steps had been taken to collect the sum paid when the act of 1912 was passed. No attention was called to the claim until March 17, 1914, when the claimant, Louise L. Coleman filed her claim with the Commissioner of Internal Revenue. This was nearly two years after this act of 1912 was passed and over two months after the time fixed by said act for filing such claims.

The conclusion is inevitable that the same was then too late and the claim could not lawfully be paid by the Secretary of the Treasury.

II.

The language of the Act of July 27, 1912, is plain and unambiguous and can not be divested of its obvious meaning by resort to construction.

Appellants point to the report of the Committee on the Judiciary of the House of Representatives recommending the passage of the act which states that the purpose of the act is to extend until January 1, 1914, the time in which to file certain classes of claims already barred by the statute of limitations, and from said report and the title of the act they argue that this was the only purpose which Congress had in mind and that Congress did not intend to place a limitation on other claims, such as theirs, which at the time of the passage of the act were not barred by any limitation.

Conceding, *arguendo,* that it was the purpose, even the immediate purpose, of the act to extend until January 1, 1914, the time in which to file *certain* claims, it by no means follows that this was the only purpose which Congress had in mind. The existence of this particular intent is in no wise inconsistent with the existence of a further intent, as disclosed by the wording of the act, to place a final limitation on *all* claims growing out of the War Revenue Act, and thereby end the unjust discrimination between different classes of claims in the matter of limitation.

The conclusive answer to the contention is that the language of the Act is plain and unambiguous and can not be divested of its obvious meaning by

resort to construction. *Hamilton* v. *Rathbone*, 175 U. S. 414, 421; *United States* v. *Lexington Mill & c Co.*, 232 U. S. 399, 409–10; *Adams Express Co.* v. *Kentucky*, 238 U. S. 190, 199; *Caminetti* v. *United States*, 242 U. S. 470, 485; *Thompson* v. *United States*, 246 U. S. 547, 551.

In *Thompson* v. *United States, supra*, this elementary rule is stated as follows:

> The intention of Congress is to be sought for primarily in the language used, and where this expresses an intention reasonably intelligible and plain it must be accepted without modification by resort to construction or conjecture.

And in *Caminetti* v. *United States, supra*, the court thus stated the rule:

> It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the law-making body which passed it, the sole function of the courts is to enforce it according to its terms. * * *
>
> Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion.

III.

This court has plainly decided that the Act of July 27, 1912, should be given a literal interpretation.

In the case of *Hvoslef* v. *United States*, 237 U. S. 1, this court plainly decided that the language of the Act of July 27, 1912, should receive a literal interpretation. That case involved a claim filed under the Act of 1912 for the refund of certain stamp taxes collected on charter parties under section 25 of the War Revenue Act. The Government contended that the purpose of Congress, as disclosed by the report of the House Committee on the Judiciary, was merely to extend the time for filing claims growing out of section 29 of the War Revenue Act, and not as to claims growing out of other sections of said act. The court rejected the contention, saying:

> It is urged by the Government that Congress intended to limit the Act of 1912 to the refunding of death duties erroneously or illegally assessed under Section 29 of the War Revenue Act. Reference is made to the legislative history of the statute, but the contention lacks adequate support. (See House Reports, 62d Cong. 2d Sess., Report No. 848, June 6, 1912.) While the pendency of claims for the refunding of such taxes may have induced the passage of the Act its terms were not confined to these. On the contrary, after providing for the claims arising under Section 29, Congress added the further clause making express provision for the presentation of claims for the refunding "of any sums

alleged to have been excessive, or in any manner wrongfully collected under the provisions of said Act"; * * * We are not at liberty to read these explicit clauses out of the statute. (P. 11.)

IV.

The Act of July 27, 1912, has been given a literal interpretation by the administrative officers charged with its execution.

As shown by the letter from the Acting Secretary of the Treasury dated September 26, 1917, printed as an appendix hereto, the Act of July 27, 1912, has been given a literal interpretation by the administrative officers charged with its execution. This interpretation has been contemporaneous, long continued, and uniform, and is entitled to great weight. *United States* v. *Moore,* 95 U. S. 760, 763; *United States* v. *Philbrick,* 120 U. S. 52, 59; *United States* v. *Finnell,* 185 U. S. 236, 244; *Louisiana* v. *Jack,* 244 U. S. 397, 406.

CONCLUSION.

The judgment of the Court of Claims should be affirmed.

ALEX. C. KING,
Solicitor General.

APRIL, 1919.